

Senate Bill No. 1743

Passed the Senate August 31, 2006

Secretary of the Senate

Passed the Assembly August 28, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1277 of the Code of Civil Procedure, to amend Sections 917, 1035, 1035.2, 1035.8, and 1036 of, to amend the headings of Article 8.5 (commencing with Section 1035), Article 8.7 (commencing with Section 1037), and Article 8.8 (commencing with Section 1038) of Chapter 4 of Division 8 of, the Evidence Code, to amend Section 6276.40 of the Government Code, and to amend Sections 264.2, 679.04, and 11163.3 of the Penal Code, relating to victims of crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1743, Bowen. Victims of crime.

(1) Existing law provides that where a petition to the court for a change of name alleges that the reason for the petition is to avoid domestic violence or stalking, as defined, and the petitioner is a participant in the address confidentiality program, the petition, the order of the court, and the copy of the order to show cause that is required to be published shall, in lieu of reciting the proposed name, indicate that the proposed name is confidential and will be on file with the Secretary of State pursuant to the provisions of the program.

This bill would additionally apply these provisions to a petitioner who is, or who is filing on behalf of, a victim of sexual assault. It would also specify that the action for the change of name is exempt under these provisions from the requirement of publication of the order to show cause.

(2) Existing law permits a person to claim an evidentiary privilege for confidential communications between that person and a specified individual, including, but not limited to, a sexual assault counselor, a domestic violence counselor, and a human trafficking counselor.

This bill would make various semantic, conforming, technical, and nonsubstantive changes to these provisions.

(3) The bill would incorporate additional changes to Section 1277 of the Code of Civil Procedure proposed by this bill and AB 2303 to take effect if both bills are chaptered and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 1277 of the Code of Civil Procedure is amended to read:

1277. (a) Where an action for a change of name is commenced by the filing of a petition, except as provided in subdivisions (b) and (c), the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed and the name proposed, and directing all persons interested in the matter to appear before the court at a time and place specified, which shall be not less than four nor more than eight weeks from the time of making the order, to show cause why the application for change of name should not be granted. A copy of the order to show cause shall be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation to be designated in the order published in the county. If no newspaper of general circulation is published in the county, a copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is located, for a like period. Proof shall be made to the satisfaction of the court of this publication or posting, at the time of the hearing of the application.

Four weekly publications shall be sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks shall be sufficient.

Where a petition has been filed for a minor by a parent and the other parent, if living, does not join in consenting thereto, the petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent pursuant to Section 413.10, 414.10, 415.10, or 415.40.

(b) (1) Where the petition for a change of name alleges a reason or circumstance described in paragraph (2), and the petitioner is a participant in the address confidentiality program created pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, the action for a change of name is exempt from the requirement for publication of the order to show cause under subdivision (a), and the petition and the order of the court shall, in lieu of reciting the proposed

name, indicate that the proposed name is confidential and will be on file with the Secretary of State pursuant to the provisions of the address confidentiality program.

(2) The procedure described in paragraph (1) applies to petitions alleging any of the following reasons or circumstances:

(A) To avoid domestic violence, as defined in Section 6211 of the Family Code.

(B) To avoid stalking, as defined in Section 646.9 of the Penal Code.

(C) The petitioner is, or is filing on behalf of, a victim of sexual assault, as defined in Section 1036.2 of the Evidence Code.

(c) An action for a change of name for a witness participating in the state Witness Protection Program established by Title 7.5 (commencing with Section 14020) of Part 4 of the Penal Code who has been approved for the change of name by the program is exempt from the requirement for publication of the order to show cause under subdivision (a).

(d) Where application for change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), whether as part of a petition or cross-complaint or as a separate order to show cause in a pending action thereunder, service of the application shall be made upon all other parties to the action in a like manner as prescribed for the service of a summons, as is set forth in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue, notice of the hearing shall be given to all parties in the action in a like manner and within the time limits prescribed generally for the type of hearing (whether trial or order to show cause) at which the issue of the change of name is to be decided.

(e) Where a guardian files a petition to change the name of his or her minor ward pursuant to Section 1276:

(1) The guardian shall provide notice of the hearing to any living parent of the minor by personal service at least 30 days prior to the hearing.

(2) If either or both parents are deceased or cannot be located, the guardian shall cause, not less than 30 days prior to the hearing, to be served a notice of the time and place of the hearing

or a copy of the order to show cause on the child's grandparents, if living, pursuant to Section 413.10, 414.10, 415.10, or 415.40.

SEC. 1.5. Section 1277 of the Code of Civil Procedure is amended to read:

1277. (a) If a proceeding for a change of name is commenced by the filing of a petition, except as provided in subdivisions (b) and (e), the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed, and the name proposed. The order shall direct all persons interested in the matter to appear before the court at a time and place specified, which shall be not less than six nor more than 12 weeks from the time of making the order, unless the court orders a different time, to show cause why the application for change of name should not be granted. The order shall direct all persons interested in the matter to make known any objection that they may have to the granting of the petition for change of name by filing a written objection, which includes the reasons for the objection, with the court at least two court days before the matter is scheduled to be heard and by appearing in court at the hearing to show cause why the petition for change of name should not be granted. The order shall state that, if no written objection is timely filed, the court may grant the petition without a hearing.

A copy of the order to show cause shall be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation to be designated in the order published in the county. If no newspaper of general circulation is published in the county, a copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is located, for a like period. Proof shall be made to the satisfaction of the court of this publication or posting, at the time of the hearing of the application.

Four weekly publications shall be sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks shall be sufficient.

If a petition has been filed for a minor by a parent and the other parent, if living, does not join in consenting thereto, the petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent pursuant to Section

413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot reasonably be accomplished pursuant to Section 415.10 or 415.40, the court may order that notice be given in a manner that the court determines is reasonably calculated to give actual notice to the nonconsenting parent. In that case, if the court determines that notice by publication is reasonably calculated to give actual notice to the nonconsenting parent, the court may determine that publication of the order to show cause pursuant to this subdivision is sufficient notice to the nonconsenting parent.

(b) (1) If the petition for a change of name alleges a reason or circumstance described in paragraph (2), and the petitioner is a participant in the address confidentiality program created pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, the action for a change of name is exempt from the requirement for publication of the order to show cause under subdivision (a), and the petition and the order of the court, shall, in lieu of reciting the proposed name, indicate that the proposed name is confidential and will be on file with the Secretary of State pursuant to the provisions of the address confidentiality program.

(2) The procedure described in paragraph (1) applies to petitions alleging any of the following reasons or circumstances:

(A) To avoid domestic violence, as defined in Section 6211 of the Family Code.

(B) To avoid stalking, as defined in Section 646.9 of the Penal Code.

(C) The petitioner is, or is filing on behalf of, a victim of sexual assault, as defined in Section 1036.2 of the Evidence Code.

(c) A proceeding for a change of name for a witness participating in the state Witness Protection Program established by Title 7.5 (commencing with Section 14020) of Part 4 of the Penal Code who has been approved for the change of name by the program is exempt from the requirement for publication of the order to show cause under subdivision (a).

(d) If application for change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), whether as part of a petition or cross-complaint or as a separate order to show cause in a pending action thereunder, service of the

application shall be made upon all other parties to the action in a like manner as prescribed for the service of a summons, as is set forth in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue, notice of the hearing shall be given to all parties in the action in a like manner and within the time limits prescribed generally for the type of hearing (whether trial or order to show cause) at which the issue of the change of name is to be decided.

(e) If a guardian files a petition to change the name of his or her minor ward pursuant to Section 1276:

(1) The guardian shall provide notice of the hearing to any living parent of the minor by personal service at least 30 days prior to the hearing.

(2) If either or both parents are deceased or cannot be located, the guardian shall cause, not less than 30 days prior to the hearing, to be served a notice of the time and place of the hearing or a copy of the order to show cause on the child's grandparents, if living, pursuant to Section 413.10, 414.10, 415.10, or 415.40.

SEC. 2. Section 917 of the Evidence Code is amended to read:

917. (a) If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergy-penitent, husband-wife, sexual assault counselor-victim, or domestic violence counselor-victim relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

(c) For purposes of this section, "electronic" has the same meaning provided in Section 1633.2 of the Civil Code.

SEC. 3. The heading of Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8.5. Sexual Assault Counselor-Victim Privilege

SEC. 4. Section 1035 of the Evidence Code is amended to read:

1035. As used in this article, “victim” means a person who consults a sexual assault counselor for the purpose of securing advice or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.

SEC. 5. Section 1035.2 of the Evidence Code is amended to read:

1035.2. As used in this article, “sexual assault counselor” means any of the following:

(a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Medicine.
- (C) Societal attitudes.
- (D) Crisis intervention and counseling techniques.
- (E) Role playing.
- (F) Referral services.
- (G) Sexuality.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of

counseling and assisting sexual assault victims, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.

(2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

- (A) Law.
- (B) Victimology.
- (C) Counseling.
- (D) Client and system advocacy.
- (E) Referral services.

SEC. 6. Section 1035.8 of the Evidence Code is amended to read:

1035.8. A victim of a sexual assault, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor if the privilege is claimed by any of the following :

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the sexual assault counselor at the time of the confidential communication, but that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

SEC. 7. Section 1036 of the Evidence Code is amended to read:

1036. The sexual assault counselor who received or made a communication subject to the privilege under this article shall claim the privilege if he or she is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1035.8.

SEC. 8. The heading of Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8.7. Domestic Violence Counselor-Victim Privilege

SEC. 9. The heading of Article 8.8 (commencing with Section 1038) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8.8. Human Trafficking Caseworker-Victim Privilege

SEC. 10. Section 6276.40 of the Government Code is amended to read:

6276.40. Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Savings association employees, disclosure of criminal history information, Sections 6525 and 8012, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on nonreemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290, Penal Code.

Sex offenders, specimen and other information, unauthorized disclosure, Section 290.2, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter's complaint, Section 8010, Business and Professions Code.

Small business information compiled by state agencies, confidentiality of, Section 15331.2, Government Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver's license or identification card, disclosure of, Section 1653.5, Vehicle Code.

SEC. 11. Section 264.2 of the Penal Code is amended to read:

264.2. (a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the medical provider that the victim has the right to have present a sexual assault counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

(4) A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

SEC. 12. Section 679.04 of the Penal Code is amended to read:

679.04. (a) A victim of sexual assault as the result of any offense specified in paragraph (1) of subdivision (b) of Section 264.2 has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "victim advocate" means a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4.

(b) (1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim's choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

SEC. 13. Section 11163.3 of the Penal Code is amended to read:

11163.3. (a) A county may establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases. Interagency domestic violence death review teams have been used successfully to ensure that incidents of domestic violence and abuse are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for community prevention and intervention initiatives to reduce and eradicate the incidence of domestic violence.

(b) For purposes of this section, “abuse” has the meaning set forth in Section 6203 of the Family Code and “domestic violence” has the meaning set forth in Section 6211 of the Family Code.

(c) A county may develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence contributed to death or whether domestic violence had occurred prior to death, but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death.

(d) County domestic violence death review teams shall be comprised of, but not limited to, the following:

- (1) Experts in the field of forensic pathology.
- (2) Medical personnel with expertise in domestic violence abuse.
- (3) Coroners and medical examiners.
- (4) Criminologists.
- (5) District attorneys and city attorneys.
- (6) Domestic violence shelter service staff and battered women’s advocates.
- (7) Law enforcement personnel.

(8) Representatives of local agencies that are involved with domestic violence abuse reporting.

(9) County health department staff who deal with domestic violence victims' health issues.

(10) Representatives of local child abuse agencies.

(11) Local professional associations of persons described in paragraphs (1) to (10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic violence death review team related to a domestic violence death review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence death review team, or between a third party and a domestic violence death review team, is confidential and not subject to disclosure or discoverable by a third party. Notwithstanding the foregoing, recommendations of a domestic violence death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the domestic violence death review team.

(f) Each organization represented on a domestic violence death review team may share with other members of the team information in its possession concerning the victim who is the subject of the review or any person who was in contact with the victim and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential. This provision shall permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other statute.

(g) Written and oral information may be disclosed to a domestic violence death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (2) of this subdivision may rely on the request in determining whether information may be disclosed to the team.

(1) No individual or agency that has information governed by this subdivision shall be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(2) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health information.

(C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code, information from elder abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(D) Notwithstanding Section 11167.5 of the Penal Code, information from child abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(E) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11075, 11105, and 13300 of the Penal Code.

(F) Notwithstanding Section 11163.2 of the Penal Code, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct, and information relating to whether a physician referred the person to local domestic violence services as recommended by Section 11161 of the Penal Code.

(G) Notwithstanding Section 827 of the Welfare and Institutions Code, information in any juvenile court proceeding.

(H) Information maintained by the Family Court, including information relating to the Family Conciliation Court Law pursuant to Section 1818 of the Family Code, and Mediation of Custody and Visitation Issues pursuant to Section 3177 of the Family Code.

(I) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10 of the Penal Code, as well as the information on which these reports are based.

(J) Notwithstanding Section 10825 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) The disclosure of written and oral information authorized under this subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, or the lawyer-client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault counselor-victim privilege protected by Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code, and the domestic violence counselor-victim privilege protected by Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 14. Section 1.5 of this bill incorporates amendments to Section 1277 of the Code of Civil Procedure proposed by both this bill and AB 2303. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1277 of the Code of Civil Procedure, and (3) this bill is enacted after AB 2303, in which case Section 1 of this bill shall not become operative.

Approved _____, 2006

Governor